HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CP No.95 of 2004 in
CP No.162 of 2000 &
CA No.46 of 2008
Date Of Decision: 10.09.2009

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M/s. Sarvotam Forests Ltd. . . . . Petitioner

VS.

1. Jagdeep Kalra s/o Sh. Prem Lal Kalra
2. Tarlochan Kaur w/o Sardar Gurcharan Singh
3. Saudagar Singh s/o Sh. Channan Singh
4. Parvinder Singh s/o Sh. Kartar Singh
5. Pardeep Kumar s/o Sh. Kewal Krishan
6. N.S. Dhillon s/o Sh. Hari Singh

. . . . Respondents

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CORAM : HON'BLE MR.JUSTICE SURYA KANT

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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Present: Ms. Puneeta Sethi, Advocate with OL
Mr. Vijay Rana, Advocate
Mr. Ravi Malhotra, Advocate
Mr. Harkesh Manuja, Advocate with
Sh. Saudagar Singh, respondent No.3
Respondent No.4 already declared P.O.

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SURYA KANT J.(ORAL)

This complaint, filed by the Official Liquidator under Section 454(5) and (5A) of the Companies Act, 1956 seeks taking appropriate action against the respondents who were the Directors of the Company at the relevant time and failed to submit the Statement of Affairs.

In response to the notice, respondent No.1 has filed his reply-affidavit as well as an additional affidavit and has thereafter placed on record certified copies of Form 32, issued by the Registrar of Companies on 2nd March, 2009. After going through the copies of the Form 32 issued by the Registrar of Companies on 2nd March, 2009, I am satisfied that the First Respondent, at the best, had given his consent for nomination as Director but, according to his counsel, was never appointed as such.

Similarly, respondent No.2 (Tarlochan Kaur) though was appointed as Director of the Company in the year 1997, however, as per the record maintained in the office of the Registrar of Companies, she had resigned as Director on 2nd November, 1998 and was no longer a Director at the relevant time when the Company was ordered to be wound up.

For the reasons afore stated, no case to prosecute respondent No.1 and 2 for committing the offence under Section 454(5) of the Act is made out. Both of them are, accordingly, discharged.

As regards, respondent No.3 (Saudagar Singh s/o Channan Singh) he has taken the plea in his reply-affidavit that he was never appointed as a Director of the Company and was employed as a Manager only and had no control over the affairs of the Company, obligating him to file the Statement of Affairs. However, the plea taken by him appears to be false on the face of it for the reason that the certified copies of Form 32 placed on record by respondent No.1 clearly depict that respondent No.3 (Saudagar Singh s/o Channan Singh) was one of the Directors of the Company and was nominated as such on 1st November, 1997.

Counsel for the respondent No.3 has been heard at some length to enable him to explain the circumstances which prevented the said respondent from furnishing the Statement of Affairs of the company in liquidation. No satisfactory explanation has come forward. In these circumstances, I am satisfied that respondent No.3 has (Saudagar Singh s/o Channan Singh) failed to submit the Statement of Affairs to be verified on affidavit along with the details as per sub-Section (2) of Section 454 of the Act without any reasonable cause and has willfully defaulted in statutory compliance. Consequently, the respondent No.3 (Saudagar Singh s/o Channan Singh) is held guilty for the commission at offence in terms of Section 454 (5) of the Act.

Faced with this, learned counsel for respondent No.3 pleaded mercy, *inter alia,* pointing out the mitigating circumstances like, that respondent No.3 belongs to a poorer section of society, and is semi-literate and was not aware about the technicalities, legal intricacies and the requirements of the provisions of Companies Act, 1956. He explains that respondent No.3 is 63-years-old and if subjected to punishment of imprisonment, it would cause severe embarrassment to him and his family besides the social stigma. The counsel prays for imposition of penalty of fine only.

Having regard to the totality of the circumstances and considering the family circumstances of respondent No.3, a fine in the sum of Rs.5/- per day is imposed on the respondent No.3 (Saudagar Singh s/o Channan Singh) with effect from the date when the default was committed, i.e.21 days after the date of winding-up i.e. on 21st May, 2003 and till date. Respondent No.3 is directed to calculate the total amount of fine and deposit the same with the Official Liquidator within one month which is to be kept in the Common Pool Fund Account. On

depositing the fine, the respondent No.3 shall stand absolved from all further consequences under Section 454(5) of the Companies Act. In case, the respondent No.3 fails to deposit the said amount of fine within the stipulated period, the Official Liquidator shall be at liberty to move an application for modification of this order and passing of some other appropriate order as per law.

So far as the respondents No.4, 5 and 6 are concerned, they have already been declared as 'Proclaimed Offender' vide order dated 15.02.2007passed by this Court and Official Liquidator was permitted to take consequential steps for attachment of the properties of these respondents, as contemplated under the law.

The District Magistrate, Ludhiana, is however directed to furnish details of the property and assets, if any, owned by the respondent No.4 to 6 within a period of 2 months and based thereupon the Official Liquidator shall be at liberty to move an appropriate application under Section 83 of the Code of Criminal Procedure.

With the above directions, the file is ordered to be consigned and be put up as and when the whereabouts of respondents No.4, 5 and 6 are known.

(SURYA KANT)
JUDGE

10.09.2009
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